

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and, (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

(the “**Third Interim Fee Period Report**”), recommending a group of interim fee applications for the Court’s approval on an uncontested basis.

2. Among the fee applications the Third Interim Fee Period report recommended were pending interim applications of McKinsey & Company, Inc. requesting fees for services as consultant to the Oversight Board for the **First** (Petition Dates through September 30, 2017), **Second** (October 1, 2017 through January 31, 2018) and **Third** (February 1 through May 31, 2018) **Interim Fee Periods**. *See* Dkt. Nos. 2073, 2756-1, 2756-2, 2756-3, 467 (Case No. 17-3567), and 919 (Case No. 04780). Those applications were based on McKinsey’s contract with the Oversight Board dated September 2017.²

3. The Third Interim Fee Period Report described the methodology the Fee Examiner developed for reporting on McKinsey fees in light of the Court’s specific request at the June 6, 2018 omnibus hearing. *See* Tr. 6-6-2018 at pp. 52-59.

4. At the November 7, 2018 omnibus hearing and through entry of an omnibus interim fee order, the Court approved both the Fee Examiner’s proposed alternative protocol for McKinsey and the then-pending interim fee applications. *See* Tr. 11-7-2018 at pp. 16-18 and Dkt. No. 4200.

5. On March 6, 2019, the Fee Examiner filed the *Fee Examiner’s Fourth Interim Report on Presumptive Standards Motion and on Professional Fees and Expenses (June 1, 2018-September 30, 2018)* [Dkt. No. 5409] applying the same methodology to recommend the Court’s approval of McKinsey’s interim applications for the **Fourth** (June 1 through September 30,

² The Executive Director of the Oversight Board executed the Consulting Agreement, effective on July 3, 2017, on September 12, 2017. McKinsey executed the agreement on September 8, 2017. The Consulting Agreement has been renewed and amended several times. *See* Third Interim Fee Period Report at pp. 12-13.

2018) **Interim Fee Period**. The Court again accepted the Fee Examiner's recommendation, entering an order on March 14, 2019 allowing the then-pending applications [Dkt. No. 5654].

6. On March 18, 2019, McKinsey filed interim applications requesting compensation for services performed for the Oversight Board from October 1, 2018 through January 31, 2019 (the "**Fifth Interim Fee Period**") [Dkt Nos. 5802, 5804, 5805]. On June 5, 2019, the Fee Examiner filed the *Fee Examiner's Fifth Interim Report on Professional Fees and Expenses (October 1, 2018 – January 31, 2019)* recommending, with McKinsey's consent, the pending McKinsey Fifth Interim Fee Period applications for deferral [Dkt. No. 7233]. On June 26, 2019, the Court entered an omnibus fee order deferring McKinsey's Fifth Interim Fee Period Applications [Dkt. No. 7670].

7. As noted in the Third Interim Fee Period Report, one factor in the Fee Examiner's due diligence recommendation was a Federal Supply Services Schedule with the General Services Administration (the "**GSA Pricelist**"), representing the U.S. government's negotiated "most favored customer pricing" available to qualified federal government users of McKinsey services. *See* Third Interim Fee Period Report at pp. 11-12.

8. Though McKinsey's contracts with the Oversight Board *are not* themselves GSA Pricelist contracts,³ McKinsey represented that the team-based pricing in the GSA Pricelist was a key reason it could not maintain hourly timekeeping records, as the Fee Examiner had initially requested to comply with PROMESA's stated criteria for the reasonableness of professional fees. As part of the Fee Examiner's review process, the Fee Examiner's counsel contacted a reference at the General Services Administration (the "**GSA Reference**") that McKinsey had provided to address the Fee Examiner's questions about the GSA Pricelist.

³ The Oversight Board is not an eligible user of the GSA Pricelist. *See* Third Interim Fee Period Report at p. 11, n.9.

DEVELOPMENTS

9. Earlier this year, aware of counsel's consultation with the GSA Reference, an investigator with the GSA Office of Inspector General ("OIG") contacted the Fee Examiner's counsel. He asked about counsel's inquiry to GSA and summarized OIG's ongoing internal review of pricing in the McKinsey GSA contract.

10. The GSA Pricelist was a factor in the Fee Examiner's recommendations, and the OIG process the investigator had described could materially affect those recommendations. Accordingly, the Fee Examiner requested a copy of the GSA OIG audit report and, with McKinsey's consent, recommended that further consideration of McKinsey interim fee requests be deferred.

11. On July 23, 2019, after repeated requests, the Fee Examiner received a document from counsel to the OIG entitled *Improper Pricing on the McKinsey Professional Services Contract May Cost the United States an Estimated \$69 Million*. The report is publicly available at <https://www.gsaig.gov/content/improper-pricing-mckinsey-professional-services-contract-may-cost-united-states-estimated-69>.

12. The OIG report does not refer specifically to these Title III proceedings or to the contract between the Oversight Board and McKinsey. Nevertheless, because the GSA Pricelist was a factor in the Fee Examiner's process, recommendations and conclusions, it warrants the Court's attention—initially through this Informative Motion.

13. Since receiving the OIG report last week, the Fee Examiner and counsel have been in discussions with the Board's general and special counsel, the Debtors' counsel, and McKinsey about appropriate next steps. The Fee Examiner will provide a written status report

on those discussions in advance of the next omnibus hearing, scheduled for September 11, 2019, or sooner should the Court so request.

Dated this 31st day of July, 2019.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system that will send notification of such filing to all attorneys of record registered in the use of the CM/ECF system.

EDGE Legal Strategies, PSC

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